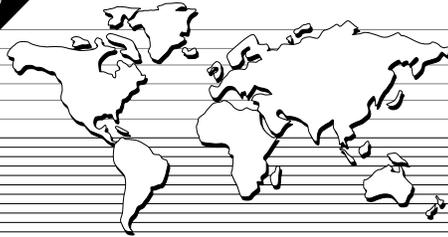




U.S. Department of the Treasury
Office of Foreign Assets Control



SUDAN

What You Need To Know About U.S. Sanctions

An overview of the Sudanese Sanctions Regulations -- Title 31 Part 538 of the U.S. Code of Federal Regulations

■ **INTRODUCTION** - On November 3, 1997, after finding that the policies and actions of the Government of Sudan, including continued support for international terrorism, ongoing efforts to destabilize neighboring governments, and the prevalence of human rights violations, including slavery and the denial of religious freedom, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, President Clinton issued Executive Order No. 13067, declaring a national emergency to deal with that threat. The order, issued under the authority of International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), the National Emergencies Act (50 U.S.C. 1601 et seq.) and section 301 of title 3, United States Code, imposed a trade embargo against Sudan and a total asset freeze against the Government of Sudan. The Sudanese Sanctions Regulations, 31 C.F.R. Part 538 (the "Regulations") implement Executive Order No. 13067.

Criminal penalties for violating the Regulations range up to 10 years in jail, \$500,000 in corporate, and \$250,000 in individual fines. In addition, civil penalties of up to \$11,000 per violation may be imposed administratively.

This fact sheet is a broad overview of the Regulations.

■ **BUYING FROM SUDAN** - Goods or services of Sudanese origin may not be imported into the United States either directly or through third countries without a license. Exceptions include: (1) Sudanese merchandise up to \$100 in value in non-commercial quantities may be brought into the United States either for strictly personal use as accompanied baggage or sent as a gift to a person in the United States and (2) information or informational materials may be imported without restriction. All other imports of Sudanese origin must be authorized by the Office of Foreign Assets Control.

Importation into the United States from third countries of goods containing raw materials or components of Sudanese origin is not prohibited if those raw materials or components have been incorporated into manufactured products or otherwise substantially transformed in a third country.

■ **SELLING TO SUDAN** - Except for information or informational materials and donated articles intended to relieve human suffering, such as food, clothing and medicine, and the licensed export of agricultural commodities and products, medicine and

medical equipment, no goods, technology, or services may be exported from the United States to Sudan, either directly or through third countries, without a license. Exportation of goods or technology from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for transshipment to Sudan. The exportation of goods or technology intended specifically for incorporation or substantial transformation into a third-country product is also prohibited if the particular product is to be used in Sudan, is being specifically manufactured to fill a Sudanese order, or if the manufacturer's sales of the particular product are predominantly to Sudan.

No U.S. bank, including its foreign branches, may finance, or arrange offshore financing for, third-country trade transactions where Sudan is known to be the ultimate destination of, or the Government of Sudan is the purchaser of, the goods. Arranging transactions which ultimately benefit Sudan (for example, brokering third-country sales to Sudan) constitutes an exportation of brokerage services to Sudan in violation of the Regulations. The Regulations also prohibit non-U.S. persons from unauthorized re-exportation of U.S. origin goods to Sudan.

■ **SPECIALLY DESIGNATED NATIONALS** - Individuals or organizations that are owned or controlled by, or act on behalf of, the Government of Sudan anywhere in the world may be named by the U.S. Treasury Department as "Specially Designated Nationals" ("SDNs") of Sudan. U.S. persons are prohibited from transacting business with these individuals and entities, and all of their property in the United States or in the possession or control of a U.S. person is blocked. Their names are published in the Federal Register, an official publication of the U.S. Government. A listing of such SDNs may be obtained by calling the Office of Foreign Assets Control ("OFAC") at 202/622-2490. The listing, however, is a partial one and any U.S. individual or organization engaging in transactions with foreign nationals must take reasonable care to make certain that such foreign nationals are not owned or controlled by or acting on behalf of Sudan. U.S. individuals or organizations who violate the Regulations by transacting business with Specially Designated Nationals may be subject to civil or criminal prosecution.

■ **SUDANESE GOVERNMENT ASSETS BLOCKED** - Effective November 4, 1997, all property and interests in property of the Government of Sudan, including its agencies, instrumentalities and controlled entities and SDNs, in the United States or in

the possession or control of a U.S. person, including their overseas branches, are blocked. All transfers of such property must be authorized by the OFAC. Any unlicensed funds transfer involving a direct or indirect interest of the Government of Sudan (including any transfer routed to a Sudanese Government-controlled bank) for which banks subject to U.S. jurisdiction receive instructions must be deposited into a blocked account on the books of the bank receiving the instructions. Such funds may not be returned to a remitter without a specific license from the OFAC. No unlicensed debits may be made to blocked accounts to pay obligations of U.S. or other persons, whether the obligations arose before or after the sanctions against Sudan were imposed. Setoffs against blocked accounts are prohibited.

■ FINANCIAL DEALINGS WITH SUDAN - Payments for and financing of licensed sales of agricultural commodities and products, medicine and medical equipment may be accomplished by cash in advance, sales on open account (provided the account receivable is not transferred by the person extending the credit), or by third country financial institutions that are neither U.S. persons nor government of Sudan entities. U.S. banks may advise or confirm letters of credit issued by third country banks covering licensed sales.

Payments for licensed sales of agricultural commodities and products, medicine and medical equipment, which must reference an appropriate OFAC license, may not involve a debit to a blocked account on the books of a U.S. depository institution. Before a U.S. bank initiates a payment, or credits its customer for a licensed transaction, it must determine that the transfer is authorized.

As a rule, all other financial dealings with Sudan are prohibited, including the performance by any U.S. person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan.

U.S. persons are authorized to send and receive personal

remittances to and from Sudan, provided that such transfers are not processed through a bank owned or controlled by the Government of Sudan. Financing related to trade contracts involving Sudan which were in place prior to November 4, 1997, and for which underlying transactions were completed by December 4, 1997, may be completed in accordance with their terms, provided that no debits are made to a blocked account.

■ PROHIBITED FACILITATION - The Regulations prohibit the facilitation by a U.S. person of the direct or indirect exportation or reexportation of goods, technology or services to or from Sudan. Facilitation of a trade or financial transaction that could be lawfully engaged in directly by a U.S. person or from the United States is not prohibited. Likewise, performance of services of a purely clerical or reporting nature that does not further trade or financial transactions with Sudan or the Government of Sudan will not violate the prohibition on exportation of services to Sudan.

■ NON-GOVERNMENTAL ORGANIZATIONS - Registration numbers may be issued by OFAC on a case-by-case basis to nongovernmental organizations ("NGOs") involved in humanitarian or religious activities in Sudan. This registration number will enable the NGO to continue authorized operations in Sudan. Applications for registration must include the name and address of the NGO's headquarters; the name, title, and telephone number of a person to be contacted in connection with the registration; the NGO's local address in Sudan and name, if different; and a detailed description of its humanitarian or religious activities and projects in Sudan. Registrants conducting transactions for their Sudanese operations should reference their registration number on all funds transfer, purchase, shipping, and financing documents.

If you have information regarding possible violations of any of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

A SUMMARY OF REGULATIONS RELATING TO COMMERCIAL SALES OF FOOD, MEDICINE, AND MEDICAL EQUIPMENT TO IRAN, LIBYA, AND SUDAN

OFAC has taken steps, after close consultation with the Departments of State and Agriculture, to implement the policy announced by President Clinton on April 28 to authorize, with appropriate safeguards, commercial sales of food, medicine and medical equipment under existing unilateral sanctions regimes. This policy affirmed the President's earlier statement that "...food and other human necessities should not be used as a tool of foreign policy except under extraordinary circumstances." The implementation is in the form of regulations amending the current sanctions regimes for Iran, Libya and Sudan in accordance with guidance from the Department of State developed following an interagency process. The new regulations provide that licenses will be issued—on a case-by-case basis and with appropriate safeguards—to allow commercial sales of food, medicine and medical equipment to approved buyers in Iran, Libya and Sudan.

What items are covered under this new policy?

This new licensing policy applies to agricultural commodities and products that are intended for ultimate consumption as food by humans or animals. This includes raw, processed and packaged foods, animal feeds and pet food, live food animals, seeds for food crops, and reproductive materials for the production of food animals. It does not include non-food agricultural commodities, such as cotton or tobacco.

The new licensing policy also applies to medicines, including those administered by injection, and medical equipment, as long as the medicines and medical equipment are not listed on the Commerce Control List, which is a list maintained by the Department of Commerce of goods that are controlled for export to certain countries for reasons of national security, nuclear nonproliferation, anti-terrorism, and so on.

Who are the approved buyers in Iran, Libya and Sudan?

The specific licenses that are issued under this policy will allow sales to:

- private individuals acting for their own account;
- nongovernmental entities; and
- government procurement bodies identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

A list of such approved government procurement bodies will be available on OFAC's Web site and from its FAX-on-Demand service and will be provided to each licensee. This list will be updated from time to time, as necessary. In addition, persons applying for specific licenses can propose adding other qualifying government procurement bodies to this list.

What procedures do people have to follow to get a license?

The new regulations set up two different procedures for obtaining specific licenses.

First, there is an expedited licensing procedure for sales of specified bulk agricultural commodities listed in an appendix to the regulations. Licensees under this procedure will receive one license authorizing them to respond to requests for bids, to enter into binding contracts and to perform contracts. Licenses will not be limited to one contract or transaction, but rather will authorize sales of bulk agricultural commodities over a specified time period. Applicants will not have to identify their purchasers or other sales terms, such as price, in advance. The licenses, however, will be subject to certain conditions. For example:

- all sales must be at prevailing market prices and only to approved purchasers, who must be fully identified in the contracts;
- payment terms must be consistent with the regulations; and
- any applicable license application requirements of another Federal agency must be satisfied.

Second, for sales of all other food items, medicines and medical equipment, the regulations provide a two-step licensing procedure that allows for case-by-case review of each contract. The first step is a general license authorizing entry into executory contracts that make performance contingent upon the prior approval of the Office of Foreign Assets Control. The executory contracts will have to meet the similar criteria to those for bulk agricultural commodity sales contracts and, in addition, will have to disclose up front all parties with an interest in the sale and set forth all the terms of the sale. The second step in this licensing procedure is for the prospective seller to apply to OFAC for a specific license permitting performance of the executory contract. The applicant will have to submit the executory contract to OFAC, as well as any other information necessary to demonstrate that all applicable requirements have been met. No contract performance is permitted until OFAC issues a specific license.

What types of payment terms and financing will be allowed for these sales?

Certain payment and financing terms for sales licensed under the new policy are authorized by a general license. The generally licensed payment and financing terms are limited to:

- cash in advance;
- sales on open account, with the proviso that the account receivable may not be transferred by the person extending the credit; or
- financing by third-country banks that are neither U.S. persons nor Iranian, Libyan or Sudanese government entities.

U.S. banks may advise or confirm letters of credit issued by third-country banks.

In addition, OFAC will consider applications for specific licenses to authorize other terms for payment and financing where compliance with the overall sanctions regime would not be undermined. Payments for licensed sales—which must reference an appropriate OFAC license—may not involve a debit to a blocked account, or a debit or credit to an account of a person in Iran or of the Government of Iran maintained on the books of a U.S. depository institution. In order to ensure that payments are not blocked or rejected, persons sending or receiving them should be certain that their transfer instructions reference the underlying OFAC license authorizing their transaction and ought to be prepared to show their bank a copy of their license.

There will be no U.S. Government funding or financing in support of these sales.

Incidental transactions and brokering

The regulations also contain a general license authorizing, with some limitations, transactions ordinarily incident to a licensed transaction, such as shipping, insurance and payment of port fees. Since travel to Libya is currently prohibited, a separate section authorizes travel transactions to, from and within Libya for the sole purpose of negotiating contracts authorized by the general license for entry into executory contracts or by specific licenses for bulk agricultural commodity sales. U.S. passports must be validated by the Department of State for travel to Libya.

Finally, there is a provision in the new regulations authorizing U.S. persons, on certain conditions, to broker the sale by third parties of bulk agricultural commodities to approved buyers in Iran, Libya and Sudan. Where the underlying sale is by a U.S. person and must be specifically licensed, brokering is permitted by general license. Where the underlying sale is a third country sale and is not subject to OFAC licensing requirements, a U.S. person must apply for a specific license to broker the sale.

July 26, 1999

This document is explanatory only and does not have the force of law. Executive Order 13067 and implementing regulations and directives contain the legally binding provisions governing the sanctions against Sudan. This document does not supplement or modify Executive Order 13067 or implementing regulations and directives.

The Office also administers sanctions programs involving Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro), North Korea, Cuba, the National Union for the Total Independence of Angola (UNITA), the Taliban in Afghanistan, Iran, Syria, Libya, Burma (Myanmar), designated Terrorists and Foreign Terrorist Organizations, international Narcotics Traffickers, and designated foreign persons who have engaged in activities related to the proliferation of weapons of mass destruction. For additional information about these programs or about the Sudanese Sanctions Regulations, please contact the:

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